

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

FREDERICK HENDERSON,)
)
Plaintiff,)
)
vs.) Case No. 06-3045-CV-GAF
)
JAMES T. SCHAEFFER, et al.,)
)
Defendants.)

**DEFENDANTS' JAMES T. SHAEFFER, M.D.'S AND ST. JOHN'S REGIONAL
HEALTH CENTER'S MOTION TO DISMISS**

COME NOW defendants James T. Shaeffer, M.D. and St. John's Regional Health Center, and move this Court to dismiss the claims against them, all as more fully set forth and shown in the attached suggestions in support of their motion. Plaintiff Frederick Henderson alleges liability against defendants arising out of medical care provided plaintiff by defendant Dr. Shaeffer on January 30, 2004. Plaintiff's complaint is pled as a straightforward medical malpractice action. Plaintiff has a separate cause of action pending before this Court arising out of the same medical treatment provided by Dr. Shaeffer which alleges constitutional violations.

Plaintiff's medical malpractice complaint must be dismissed for the reason that plaintiff has failed to timely file a healthcare affidavit, required by Missouri statute § 538.225, which is mandatory to maintain a cause of action against a healthcare provider for damages for personal injury on account of the rendering or failure to render healthcare services. See generally RSMo. 538.225(1). Additionally, plaintiff's complaint must be dismissed for the reason that plaintiff failed to file this medical malpractice claim within the applicable statute of limitations.

WHEREFORE, for the reasons stated above, and as set out more fully in defendants' suggestions in support of their motion, which are hereby incorporated by this reference, defendants James T. Shaeffer, M.D. and St. John's Regional Health Center pray the claims made against them be dismissed with prejudice, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

LATHROP & GAGE L.C.

By /s/ Darynne L. O'Neal

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a complete copy of *Defendants' James T. Shaeffer, M.D.'s and St. John's Regional Health Center's Motion to Dismiss* was served upon counsel and/or parties of record via Electronic Filing this 20th day of September, 2006 and by mailing a copy to plaintiff at the following address: Frederick Henderson, 13219-014, P. O. Box 1000, Lewisburg, PA 17837.

/s/ Darynne L. O'Neal